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CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]1921

No. [redacted]214

JULIUS I. SMIETANKA, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS,

vs.

INDIANA STEEL COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED JANUARY [redacted], 1921.

(28067)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 710.

JULIUS I. SMIETANKA, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS,

vs.

INDIANA STEEL COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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1 In the United States Circuit Court of Appeals for the Seventh Circuit.

October Term, 1920, January Session, 1921.

JULIUS F. SMIETANKA, COLLECTOR OF INTERNAL REVENUE for the first district of Illinois, plaintiff in error,
vs.
INDIANA STEEL COMPANY, A CORPORATION, DEFENDANT in error.
No. 2844.

Error to the District Court of the United States for the Northern District of Illinois, Eastern Division.

To the honorable the Supreme Court of the United States:

The above entitled cause has been fully heard and argued in this court before the below subscribing judges thereof, and certain questions of law in said cause, as below indicated, have arisen, whereon this court is in doubt, and for its proper decision of such questions this court desires the advice and instruction of the honorable Supreme Court of the United States.

It is therefore ordered that the statement and questions below following be certified to the Supreme Court of the United States in pursuance of the Act of Congress in such case made and provided.

STATEMENT.

The suit was commenced in the United States District Court against plaintiff in error. Declaration in the suit was filed, alleging that defendant in error is a corporation and that pursuant to the supposed authority of section 38, chapter 6, of an act of Con-
2 gress of August 5, 1909, entitled "An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," there was assessed against defendant in error, as a corporation having capital stock and alleged to be engaged in or doing business, certain internal revenue special excise taxes, alleged to be due the United States, of $25,897.27 for the year 1910, and of $52,166.26 for the year 1912; that the lists for such assessment were duly sent to S. M. Fitch, as the then collector of internal revenue for the United States for the First District of Illinois, wherein it was claimed that such taxes were assessable and payable, and that the said S. M. Fitch, as such collector of internal revenue, did in each case make due demand upon defendant in error for payment of such tax, giving in each case due notice that in default of payment the penalties as provided by law for non-payment would be exacted and collected from defendant in error; and that thereupon in each case, after due protest against such assessments and returns of taxes, defendant in error unwillingly and under duress paid to said S. M. Fitch, and said S. M. Fitch collected and received, as such collector of internal revenue, the amounts of said taxes, respectively; that in and for the years for which such taxes were assessed

and paid defendant in error was not engaged in, nor carrying on, nor doing business of any character, having in the year 1909 leased all its property to the Illinois Steel Company, and that therefore such taxes were unlawfully assessed against and collected from defendant in error, and that in each case defendant in error made due claim for refund of such taxes in manner as is by law required, but that in each case its claim therefor was rejected.

The declaration further alleges that plaintiff in error is the successor in office of the said S. M. Fitch as such collector of internal revenue, and it is not charged in the declaration that plaintiff in error in his capacity of collector of internal revenue, or in any other capacity, participated in the assessment or collection of such taxes, or that all or any part thereof ever came into his possession or control.

The judgment, to reverse which the writ of error herein is prosecuted, was for $105,894.01, and in, or as part of such judgment, the court certified there was probable cause for the act done by the collector in the collection of such amounts from defendant in error, and that in making the collections he acted under the direc-
3 tion of the Commissioner of Internal Revenue, and that the amounts recovered shall be provided for and paid out of the proper appropriation from the Treasury of the United States.

QUESTIONS.

1. Assuming that the declaration states a good cause of action had the suit been brought against S. M. Fitch, the internal revenue collector who actually collected and received the taxes, does it state any cause of action whatever against said S. M. Fitch's successor in office, the plaintiff in error, against whom the suit was brought, but who had no participation in the collection, receipt or disbursement of such taxes?

2. May suit in the District Court of the United States properly be brought and maintained against a United States collector of internal revenue for the recovery of the amount of a United States internal revenue tax, unlawfully assessed and collected, but in the collection and disbursement of which such collector had no agency, the entire transaction of such assessment, collection and disbursement having occurred during the incumbency of such office of a predecessor in office of such collector?

FRANCIS E. BAKER,
United States Circuit Judge.
SAMUEL ALSCHULER,
United States Circuit Judge.
EVAN A. EVANS,
United States Circuit Judge.
Judges of the United States Circuit Court of Appeals for the Seventh Judicial Circuit.

(Endorsed:) Filed Jan. 25, 1921. Edward M. Holloway, clerk.

4 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 3, inclusive, contain a true copy of the questions certified to the Supreme Court of the United States on the twenty-fifth day of January, 1921, in the case of Julius F. Smietanka, collector of internal revenue for the first district of Illinois, plaintiff in error, vs. Indiana Steel Company, a corporation, defendant in error, No. 2844, October term, 1920, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the city of Chicago, this twenty-fifth day of January, A. D. 1920.

[SEAL.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit
Court of Appeals for the Seventh Circuit.

(Endorsed:) Received Jan. 27, 1921. Office of the clerk Supreme Court U. S.

(Indorsement on cover:) File No. 28067. U. S. Circuit Court Court Appeals, 7th Circuit. Term No. 710. Julius F. Smietanka, collector of internal revenue for the first district of Illinois, vs. Indiana Steel Company (certificate.) Filed January 29th, 1921. File No. 28067.

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